

1 SENATE BILL 378

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Cynthia Nava

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6
7
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC
12 SCHOOL CAPITAL OUTLAY ACT TO CHANGE CERTAIN CRITERIA FOR GRANTS
13 FOR LEASE PAYMENTS, TO ALLOW FOR CREDITS FOR CERTAIN SCHOOL
14 FACILITIES IN REMOTE RURAL AREAS, TO CREATE PROGRAMS TO FUND
15 HIGHLY COST-EFFECTIVE PROJECTS, IMPROVEMENTS TO ATHLETIC FIELDS
16 AND AUDITORIUMS OR PERFORMING ARTS CENTERS IN RURAL AREAS,
17 NEEDED SCIENTIFIC LABORATORIES IN CERTAIN SCHOOLS AND NECESSARY
18 ROOF REPAIRS AND REPLACEMENTS AND TO LIMIT ANNUAL EXPENDITURES
19 FOR CERTAIN OPERATING COSTS; REVISING THE STANDARDS REQUIRED
20 FOR CHARTER SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL
21 CAPITAL IMPROVEMENTS ACT TO REQUIRE CERTAIN DISTRIBUTIONS TO
22 CHARTER SCHOOLS, TO EXPAND THE DEFINITION OF "CAPITAL
23 IMPROVEMENTS" AND TO ALLOW THE STATE DISTRIBUTION TO BE
24 TEMPORARILY USED FOR CERTAIN OPERATING COSTS; ESTABLISHING A
25 TRAINING AND CERTIFICATION PROGRAM FOR CERTAIN SCHOOL DISTRICT

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1 MAINTENANCE EMPLOYEES; MAKING APPROPRIATIONS; DECLARING AN
2 EMERGENCY.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 Section 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
6 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
7 as amended) is amended to read:

8 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

9 A. The facilities of a charter school that is
10 approved on or after July 1, 2005 and before July 1, ~~[2010]~~
11 2015 shall meet educational occupancy standards required by
12 applicable New Mexico construction codes.

13 B. The facilities of a charter school [~~that is in~~
14 ~~existence, or has been approved, prior to July 1, 2005~~] whose
15 charter has been renewed at least once shall be evaluated,
16 prioritized and eligible for grants pursuant to the Public
17 School Capital Outlay Act in the same manner as all other
18 public schools in the state; provided that for charter school
19 facilities in leased facilities, grants may be used [~~as~~] to
20 provide additional lease payments for leasehold improvements
21 made by the lessor.

22 C. On or after July 1, ~~[2010, an application for a~~
23 ~~charter shall not be approved]~~ 2015, a new charter school shall
24 not open and an existing charter shall not be renewed unless
25 the charter school:

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1 (1) is housed in a ~~[public]~~ building that is:

2 (a) owned by the charter school, the
3 school district, the state, an institution of the state,
4 another political subdivision of the state, the federal
5 government or one of its agencies or a tribal government; ~~[and~~

6 ~~(b) subject to evaluation and~~
7 ~~prioritization and eligible for grants pursuant to the Public~~
8 ~~School Capital Outlay Act in the same manner as all other~~
9 ~~public schools in the state;~~

10 ~~(2) is housed in a building that meets the~~
11 ~~statewide adequacy standards developed pursuant to the Public~~
12 ~~School Capital Outlay Act and that is being leased by the~~
13 ~~charter school pursuant to a financing agreement that contains~~
14 ~~an option to purchase for a price that is reduced according to~~
15 ~~the lease payments made;] or~~

16 (b) subject to a lease purchase
17 arrangement that has been entered into and approved pursuant to
18 the Public School Lease Purchase Act; or

19 ~~[(3)]~~ (2) if it is not housed in a building
20 described in Paragraph (1) ~~[or (2)]~~ of this subsection,
21 demonstrates that:

22 (a) the facility in which the charter
23 school is housed meets the statewide adequacy standards
24 developed pursuant to the Public School Capital Outlay Act and
25 the owner of the facility is contractually obligated to

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1 maintain those standards at no additional cost to the charter
2 school or the state; and

3 (b) either: 1) public buildings are not
4 available or adequate for the educational program of the
5 charter school; or 2) the owner of the facility is a nonprofit
6 entity specifically organized for the purpose of providing the
7 facility for the charter school.

8 D. The public school capital outlay council:

9 (1) shall determine whether facilities of a
10 charter school meet the educational occupancy standards
11 pursuant to the requirements of Subsection A of this section

12 [~~(2) shall determine whether facilities of a~~
13 ~~charter school meet~~] or the requirements of Subsections B and C
14 of this section, as applicable; and

15 [~~(3)~~] (2) upon a determination that specific
16 requirements are not appropriate or reasonable for a charter
17 school, may grant a variance from those requirements for that
18 charter school."

19 Section 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
20 Chapter 235, Section 4, as amended) is amended to read:

21 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
22 USE.--

23 A. The "public school capital outlay fund" is
24 created. Balances remaining in the fund at the end of each
25 fiscal year shall not revert.

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1 B. Except as provided in Subsections G and I
2 through L of this section, money in the fund may be used only
3 for capital expenditures deemed necessary by the council for an
4 adequate educational program.

5 C. The council may authorize the purchase by the
6 public school facilities authority of portable classrooms to be
7 loaned to school districts to meet a temporary requirement.
8 Payment for these purchases shall be made from the fund. Title
9 and custody to the portable classrooms shall rest in the public
10 school facilities authority. The council shall authorize the
11 lending of the portable classrooms to school districts upon
12 request and upon finding that sufficient need exists.

13 Application for use or return of state-owned portable classroom
14 buildings shall be submitted by school districts to the
15 council. Expenses of maintenance of the portable classrooms
16 while in the custody of the public school facilities authority
17 shall be paid from the fund; expenses of maintenance and
18 insurance of the portable classrooms while in the custody of a
19 school district shall be the responsibility of the school
20 district. The council may authorize the permanent disposition
21 of the portable classrooms by the public school facilities
22 authority with prior approval of the state board of finance.

23 D. Applications for assistance from the fund shall
24 be made by school districts to the council in accordance with
25 requirements of the council. Except as provided in Subsection

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1 K of this section, the council shall require as a condition of
2 application that a school district have a current five-year
3 facilities plan, which shall include a current preventive
4 maintenance plan to which the school adheres for each public
5 school in the school district.

6 E. The council shall review all requests for
7 assistance from the fund and shall allocate funds only for
8 those capital outlay projects that meet the criteria of the
9 Public School Capital Outlay Act.

10 F. Money in the fund shall be disbursed by warrant
11 of the department of finance and administration on vouchers
12 signed by the secretary of finance and administration following
13 certification by the council that an application has been
14 approved or an expenditure has been ordered by a court pursuant
15 to Section 22-24-5.4 NMSA 1978. At the discretion of the
16 council, money for a project shall be distributed as follows:

17 (1) up to ten percent of the portion of the
18 project cost funded with distributions from the fund or five
19 percent of the total project cost, whichever is greater, may be
20 paid to the school district before work commences with the
21 balance of the grant award made on a cost-reimbursement basis;
22 or

23 (2) the council may authorize payments
24 directly to the contractor.

25 G. Balances in the fund may be annually

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1 appropriated for the core administrative functions of the
2 public school facilities authority pursuant to the Public
3 School Capital Outlay Act and, in addition, balances in the
4 fund may be expended by the public school facilities authority,
5 upon approval of the council, for project management expenses;
6 provided that:

7 (1) the total annual expenditures from the
8 fund for the core administrative functions pursuant to this
9 subsection shall not exceed five percent of the average annual
10 grant assistance authorized from the fund during the three
11 previous fiscal years; and

12 (2) any unexpended or unencumbered balance
13 remaining at the end of a fiscal year from the expenditures
14 authorized in this subsection shall revert to the fund.

15 H. Up to [~~thirty million dollars (\$30,000,000)~~] ten
16 million dollars (\$10,000,000) of the fund may be allocated
17 annually by the council [~~in fiscal years 2006 and 2007~~] for a
18 roof repair and replacement initiative with projects to be
19 identified by the council pursuant to Section 22-24-4.3 NMSA
20 1978; provided that [~~all~~] money allocated pursuant to this
21 subsection shall be expended [~~prior to September 1, 2008~~]
22 within two years of the allocation.

23 I. The fund may be expended annually by the council
24 [~~in fiscal years 2006 through 2020~~] for grants to school
25 districts for the purpose of making lease payments for

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1 classroom facilities, including facilities leased by charter
2 schools. The grants shall be made upon application by the
3 school districts and pursuant to rules adopted by the council;
4 provided that an application on behalf of a charter school
5 shall be made by the school district but, if the school
6 district fails to make an application on behalf of a charter
7 school, the charter school may submit its own application. The
8 following criteria shall apply to the grants:

9 (1) the amount of a grant to a school district
10 shall not exceed:

11 (a) the actual annual lease payments
12 owed for leasing classroom space for schools, including charter
13 schools, in the district; or

14 (b) seven hundred dollars (\$700)
15 multiplied by the number of MEM using the leased classroom
16 facilities; provided that in fiscal year 2009 and in each
17 subsequent fiscal year, this amount shall be adjusted by the
18 percentage increase between the penultimate calendar year and
19 the immediately preceding calendar year of the consumer price
20 index for the United States, all items, as published by the
21 United States department of labor [~~and provided further that if~~
22 ~~the total grants awarded pursuant to this paragraph would~~
23 ~~exceed the total annual amount available, the rate specified in~~
24 ~~this subparagraph shall be reduced proportionately];~~

25 (2) a grant received for the lease payments of

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1 a charter school may be used by that charter school as a state
2 match necessary to obtain federal grants pursuant to the
3 federal No Child Left Behind Act of 2001;

4 (3) at the end of each fiscal year, any
5 unexpended or unencumbered balance of the appropriation shall
6 revert to the fund;

7 (4) no grant shall be made for lease payments
8 due pursuant to a financing agreement under which the
9 facilities may be purchased for a price that is reduced
10 according to the lease payments made unless:

11 (a) the agreement has been approved
12 pursuant to the provisions of the Public School Lease Purchase
13 Act; and

14 (b) the facilities are leased by a
15 charter school;

16 [~~(4)~~] (5) if the lease payments are made
17 pursuant to a financing agreement under which the facilities
18 may be purchased for a price that is reduced according to the
19 lease payments made,

20 [~~(a)~~] ~~a grant shall not be made unless~~
21 ~~the council determines that the leased facilities meet the~~
22 ~~statewide adequacy standards; and~~

23 ~~(b)]~~ neither a grant nor any provision of
24 the Public School Capital Outlay Act creates a legal obligation
25 for the school district or charter school to continue the lease

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1 from year to year or to purchase the facilities nor does it
2 create a legal obligation for the state to make subsequent
3 grants pursuant to the provisions of this subsection;

4 ~~[(5) the total amount expended from the fund~~
5 ~~pursuant to this subsection shall not exceed:~~

6 ~~(a) seven million five hundred thousand~~
7 ~~dollars (\$7,500,000) in fiscal year 2007; and~~

8 ~~(b) in fiscal year 2008 and each~~
9 ~~subsequent fiscal year, the maximum amount for the previous~~
10 ~~fiscal year adjusted by the percentage increase between the~~
11 ~~penultimate calendar year and the immediately preceding~~
12 ~~calendar year of the consumer price index for the United~~
13 ~~States, all items, as published by the United States department~~
14 ~~of labor] and~~

15 (6) as used in this subsection:

16 (a) "MEM" means: 1) the average
17 full-time-equivalent enrollment using leased classroom
18 facilities on the eightieth and one hundred twentieth days of
19 the prior school year; or 2) in the case of an approved charter
20 school that has not commenced classroom instruction, the
21 estimated full-time-equivalent enrollment that will use leased
22 classroom facilities in the first year of instruction, as shown
23 in the approved charter school application; provided that,
24 after the eightieth day of the school year, the MEM shall be
25 adjusted to reflect the full-time-equivalent enrollment on that

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1 date; and

2 (b) "classroom facilities" or "classroom
3 space" includes the space needed, as determined by the minimum
4 required under the statewide adequacy standards, for the direct
5 administration of school activities.

6 J. In addition to other authorized expenditures
7 from the fund, up to one percent of the average grant
8 assistance authorized from the fund during the three previous
9 fiscal years may be expended in each fiscal year by the public
10 school facilities authority to pay the state fire marshal, the
11 construction industries division of the regulation and
12 licensing department and local jurisdictions having authority
13 from the state to permit and inspect projects for expenditures
14 made to permit and inspect projects funded in whole or in part
15 under the Public School Capital Outlay Act. The authority
16 shall enter into contracts with the state fire marshal, the
17 construction industries division or the appropriate local
18 authorities to carry out the provisions of this subsection.
19 Such a contract may provide for initial estimated payments from
20 the fund prior to the expenditures if the contract also
21 provides for additional payments from the fund if the actual
22 expenditures exceed the initial payments and for repayments
23 back to the fund if the initial payments exceed the actual
24 expenditures.

25 K. Pursuant to guidelines established by the

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1 council, allocations from the fund may be made to assist school
2 districts in developing and updating five-year facilities plans
3 required by the Public School Capital Outlay Act; provided
4 that:

5 (1) no allocation shall be made unless the
6 council determines that the school district is willing and able
7 to pay the portion of the total cost of developing or updating
8 the plan that is not funded with the allocation from the fund.
9 Except as provided in Paragraph (2) of this subsection, the
10 portion of the total cost to be paid with the allocation from
11 the fund shall be determined pursuant to the methodology in
12 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

13 (2) the allocation from the fund may be used
14 to pay the total cost of developing or updating the plan if:

15 (a) the school district has fewer than
16 an average of six hundred full-time-equivalent students on the
17 eightieth and one hundred twentieth days of the prior school
18 year; or

19 (b) the school district meets all of the
20 following requirements: 1) the school district has fewer than
21 an average of one thousand full-time-equivalent students on the
22 eightieth and one hundred twentieth days of the prior school
23 year; 2) the school district has at least seventy percent of
24 its students eligible for free or reduced-fee lunch; 3) the
25 state share of the total cost, if calculated pursuant to the

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1 methodology in Paragraph (5) of Subsection B of Section 22-24-5
2 NMSA 1978, would be less than fifty percent; and 4) for all
3 educational purposes, the school district has a residential
4 property tax rate of at least seven dollars (\$7.00) on each one
5 thousand dollars (\$1,000) of taxable value, as measured by the
6 sum of all rates imposed by resolution of the local school
7 board plus rates set to pay interest and principal on
8 outstanding school district general obligation bonds.

9 L. Upon application by a school district,
10 allocations from the fund may be made by the council for the
11 purpose of demolishing abandoned school district facilities,
12 provided that:

13 (1) the costs of continuing to insure an
14 abandoned facility outweigh any potential benefit when and if a
15 new facility is needed by the school district;

16 (2) there is no practical use for the
17 abandoned facility without the expenditure of substantial
18 renovation costs; and

19 (3) the council may enter into an agreement
20 with the school district under which an amount equal to the
21 savings to the district in lower insurance premiums are used to
22 reimburse the fund fully or partially for the demolition costs
23 allocated to the district.

24 M. Up to ten million dollars (\$10,000,000) of the
25 fund may be allocated annually by the council in fiscal years

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1 2009 through 2012 for highly cost-effective project grants
2 awarded pursuant to Section 22-24-4.5 NMSA 1978.

3 N. Up to five million dollars (\$5,000,000) of the
4 fund may be allocated annually by the council in fiscal years
5 2009 through 2012 for building, renovating and equipping high
6 school science laboratories pursuant to Section 22-24-4.6 NMSA
7 1978.

8 O. Up to two million dollars (\$2,000,000) of the
9 fund may be allocated by the council in fiscal years 2009
10 through 2011 for lights and bleachers for high school athletic
11 fields pursuant to Section 22-24-4.7 NMSA 1978.

12 P. Up to five million dollars (\$5,000,000) of the
13 fund may be allocated annually by the council in fiscal years
14 2009 through 2012 for auditoriums or performing arts centers
15 pursuant to Section 22-24-4.7 NMSA 1978."

16 Section 3. Section 22-24-4.3 NMSA 1978 (being Laws 2005,
17 Chapter 274, Section 6) is amended to read:

18 "22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--

19 A. The council shall develop guidelines for a roof
20 repair and replacement initiative pursuant to the provisions of
21 this section.

22 B. A school district, desiring a grant award
23 pursuant to this section, shall submit an application to the
24 council. The application shall include an assessment of the
25 roofs on district school buildings that, in the opinion of the

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1 school district, create a threat of significant property
2 damage.

3 C. The public school facilities authority shall
4 verify the assessment made by the school district and rank the
5 application with similar applications pursuant to a methodology
6 adopted by the council.

7 D. After a public hearing and to the extent that
8 money is available in the fund for such purposes, the council
9 shall approve roof repair or replacement projects on the
10 established priority basis; provided that no project shall be
11 approved unless the council determines that the school district
12 is willing and able to pay the portion of the total cost of the
13 project that is not funded with grant assistance from the fund.
14 In order to pay its portion of the total project cost, a school
15 district may use state distributions made to the school
16 district pursuant to the Public School Capital Improvements Act
17 or, if within the scope of the authorizing resolution, proceeds
18 of the property tax imposed pursuant to that act.

19 E. The state share of the cost of an approved roof
20 repair or replacement project shall be calculated pursuant to
21 the methodology in Paragraph (5) of Subsection B of Section
22 22-24-5 NMSA 1978.

23 F. A grant made pursuant to this section shall be
24 expended by the school district [~~prior to September 1, 2008~~]
25 within two years of the grant allocation."

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1 Section 4. A new section of the Public School Capital
2 Outlay Act, Section 22-24-4.5 NMSA 1978, is enacted to read:

3 "22-24-4.5. [NEW MATERIAL] GRANTS FOR HIGHLY COST-
4 EFFECTIVE PROJECTS.--

5 A. As used in this section, a "highly cost-
6 effective project" means a project for repair or correction of
7 site drainage, repair or replacement of water or wastewater
8 systems, repair or replacement of heating, ventilation or air
9 conditioning equipment, installation of energy efficiency
10 measures or similar projects that will:

11 (1) result in an immediate, identifiable
12 savings in operating costs that, over the lifetime of the
13 project, will greatly exceed the amortized cost of the project;
14 or

15 (2) prevent otherwise unavoidable future
16 property damage that, ultimately, would require much greater
17 expenditures.

18 B. The council shall develop guidelines for
19 prioritizing and awarding grants for highly cost-effective
20 projects pursuant to the provisions of this section.

21 C. A school district, desiring a grant award
22 pursuant to this section, shall submit an application to the
23 council. The application shall include an assessment of the
24 benefits that will result if the grant is awarded to the school
25 district.

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1 D. The public school facilities authority shall
2 verify the assessment made by the school district and rank the
3 application with similar applications pursuant to a methodology
4 adopted by the council.

5 E. After a public hearing and to the extent that
6 money is available in the fund for such purposes, the council
7 shall approve grants for projects on the established priority
8 basis; provided that no project shall be approved unless the
9 council determines that the school district is willing and able
10 to pay the portion of the total cost of the project that is not
11 funded with grant assistance from the fund. In order to pay
12 its portion of the total project cost, a school district may
13 use state distributions made to the school district pursuant to
14 the Public School Capital Improvements Act or, if within the
15 scope of the authorizing resolution, proceeds of the property
16 tax imposed pursuant to that act or the Public School Buildings
17 Act.

18 F. The state share of the cost of an approved
19 project shall be calculated pursuant to the methodology in
20 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978."

21 Section 5. A new section of the Public School Capital
22 Outlay Act, Section 22-24-4.6 NMSA 1978, is enacted to read:

23 "22-24-4.6. [NEW MATERIAL] GRANTS FOR HIGH SCHOOL
24 SCIENCE LABORATORIES AND EQUIPMENT--STUDY REQUIRED.--

25 A. The legislature finds that:

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1 (1) tests show that an increasing number of
2 United States high school students are graduating without being
3 adequately trained in the physical sciences;

4 (2) in today's world economy, American workers
5 will need to compete with workers from other developed
6 countries who are receiving better scientific educations;

7 (3) high school students cannot receive an
8 adequate scientific education without adequate facilities;

9 (4) many New Mexico high schools do not have
10 and cannot afford the science facilities that are necessary for
11 a twenty-first century high school education; and

12 (5) the Public School Capital Outlay Act
13 should be used as a vehicle for building or equipping science
14 laboratories in New Mexico high schools.

15 B. The council shall develop guidelines for
16 awarding grants for building or equipping high school science
17 laboratories pursuant to the provisions of this section.

18 C. A school district, desiring a grant award for a
19 high school science laboratory pursuant to this section, shall
20 submit an application to the council. The application shall
21 include an assessment of the existing science laboratory and
22 equipment at the high school and the need for new laboratory
23 facilities or equipment.

24 D. The public school facilities authority shall
25 verify the assessment made by the school district and rank the

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1 application with similar applications pursuant to a methodology
2 adopted by the council.

3 E. After a public hearing and to the extent that
4 money is available in the fund for such purposes, the council
5 shall approve grants for projects on the established priority
6 basis; provided that no project shall be approved unless the
7 council determines that:

8 (1) the school district is willing and able to
9 pay the portion of the total cost of the project that is not
10 funded with grant assistance from the fund; and

11 (2) the high school facility in which the
12 science laboratory or equipment will be installed meets the
13 statewide adequacy standards and is therefore ineligible for a
14 grant pursuant to Section 22-24-5 NMSA 1978 or has a New Mexico
15 condition index, as determined by the council, below twenty and
16 therefore will not be eligible for funding for several years.

17 F. The state share of the cost of an approved
18 project shall be calculated pursuant to the methodology in
19 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

20 G. The public school capital outlay oversight task
21 force shall evaluate the need for science laboratories and
22 equipment at public schools other than high schools and report
23 its findings and recommendations to the second session of the
24 forty-ninth legislature."

25 Section 6. A new section of the Public School Capital

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1 Outlay Act, Section 22-24-4.7 NMSA 1978, is enacted to read:

2 "22-24-4.7. [NEW MATERIAL] GRANTS FOR ATHLETIC FIELD
3 IMPROVEMENTS, AUDITORIUMS OR PERFORMING ARTS CENTERS.--

4 A. Pursuant to the provisions of this section, the
5 council shall develop guidelines for awarding grants for:

6 (1) lights and bleachers for high school
7 athletic fields that were previously funded pursuant to the
8 Public School Capital Outlay Act; and

9 (2) auditoriums or performing arts centers at
10 schools in rural communities, which will be used jointly by the
11 school and the community.

12 B. A school district, desiring a grant award
13 pursuant to this section, shall submit an application to the
14 council, containing all information required by rule of the
15 council.

16 C. Pursuant to rules adopted by the council, the
17 public school facilities authority shall evaluate each
18 application and rank the application with similar applications.

19 D. After a public hearing and to the extent that
20 money is available in the fund for such purposes, the council
21 shall approve grants on the established priority basis;
22 provided that no project shall be approved unless the council
23 determines that:

24 (1) if the project is lights and bleachers at
25 a high school athletic field:

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1 (a) the athletic field was built or
2 acquired as part of a project that was previously funded
3 pursuant to the Public School Capital Outlay Act;

4 (b) the athletic field is in a rural
5 area; and

6 (c) there is no other athletic field
7 with lights and bleachers that is practicably available for use
8 by the high school;

9 (2) if the project is an auditorium or a
10 performing arts center:

11 (a) the school is in a rural area;

12 (b) the auditorium or performing arts
13 center will be used by both the school district and the
14 community; and

15 (c) there is no other facility
16 practicably available for use as an auditorium or a performing
17 arts center by the community or the school; and

18 (3) the school district is willing and able to
19 pay the portion of the total cost of the project that is not
20 funded with grant assistance from the fund.

21 E. The state share of an approved project shall be
22 calculated pursuant to the methodology in Paragraph (5) of
23 Subsection B of Section 22-24-5 NMSA 1978."

24 Section 7. Section 22-24-5 NMSA 1978 (being Laws 1975,
25 Chapter 235, Section 5, as amended) is amended to read:

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1 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
2 APPLICATION--GRANT ASSISTANCE.--

3 A. Applications for grant assistance, approval of
4 applications, prioritization of projects and grant awards shall
5 be conducted pursuant to the provisions of this section.

6 B. Except as provided in Sections 22-24-4.3,
7 22-24-4.5 through 22-24-4.7, 22-24-5.4 and 22-24-5.6 NMSA 1978,
8 the following provisions govern grant assistance from the fund
9 for a public school capital outlay project not wholly funded
10 pursuant to Section 22-24-4.1 NMSA 1978:

11 (1) all school districts are eligible to apply
12 for funding from the fund, regardless of percentage of
13 indebtedness;

14 (2) priorities for funding shall be determined
15 by using the statewide adequacy standards developed pursuant to
16 Subsection C of this section; provided that:

17 (a) the council shall apply the
18 standards to charter schools to the same extent that they are
19 applied to other public schools; and

20 (b) in an emergency in which the health
21 or safety of students or school personnel is at immediate risk
22 or in which there is a threat of significant property damage,
23 the council may award grant assistance for a project using
24 criteria other than the statewide adequacy standards;

25 (3) the council shall establish criteria to be

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1 used in public school capital outlay projects that receive
2 grant assistance pursuant to the Public School Capital Outlay
3 Act. In establishing the criteria, the council shall consider:

4 (a) the feasibility of using design,
5 build and finance arrangements for public school capital outlay
6 projects;

7 (b) the potential use of more durable
8 construction materials that may reduce long-term operating
9 costs;

10 (c) concepts that promote efficient but
11 flexible utilization of space; and

12 (d) any other financing or construction
13 concept that may maximize the dollar effect of the state grant
14 assistance;

15 (4) no more than ten percent of the combined
16 total of grants in a funding cycle shall be used for
17 retrofitting existing facilities for technology infrastructure;

18 (5) except as provided in Paragraph (6), (8),
19 [~~or~~] (9) or (11) of this subsection, the state share of a
20 project approved and ranked by the council shall be funded
21 within available resources pursuant to the provisions of this
22 paragraph. No later than May 1 of each calendar year, a value
23 shall be calculated for each school district in accordance with
24 the following procedure:

25 (a) the final prior year net taxable

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1 value for a school district divided by the MEM for that school
2 district is calculated for each school district;

3 (b) the final prior year net taxable
4 value for the whole state divided by the MEM for the state is
5 calculated;

6 (c) excluding any school district for
7 which the result calculated pursuant to Subparagraph (a) of
8 this paragraph is more than twice the result calculated
9 pursuant to Subparagraph (b) of this paragraph, the results
10 calculated pursuant to Subparagraph (a) of this paragraph are
11 listed from highest to lowest;

12 (d) the lowest value listed pursuant to
13 Subparagraph (c) of this paragraph is subtracted from the
14 highest value listed pursuant to that subparagraph;

15 (e) the value calculated pursuant to
16 Subparagraph (a) of this paragraph for the subject school
17 district is subtracted from the highest value listed in
18 Subparagraph (c) of this paragraph;

19 (f) the result calculated pursuant to
20 Subparagraph (e) of this paragraph is divided by the result
21 calculated pursuant to Subparagraph (d) of this paragraph;

22 (g) the sum of the property tax mill
23 levies for the prior tax year imposed by each school district
24 on residential property pursuant to Chapter 22, Article 18 NMSA
25 1978, the Public School Capital Improvements Act, the Public

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1 School Buildings Act, the Education Technology Equipment Act
2 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
3 is calculated for each school district;

4 (h) the lowest value calculated pursuant
5 to Subparagraph (g) of this paragraph is subtracted from the
6 highest value calculated pursuant to that subparagraph;

7 (i) the lowest value calculated pursuant
8 to Subparagraph (g) of this paragraph is subtracted from the
9 value calculated pursuant to that subparagraph for the subject
10 school district;

11 (j) the value calculated pursuant to
12 Subparagraph (i) of this paragraph is divided by the value
13 calculated pursuant to Subparagraph (h) of this paragraph;

14 (k) if the value calculated for a
15 subject school district pursuant to Subparagraph (j) of this
16 paragraph is less than five-tenths, then, except as provided in
17 Subparagraph (n) or (o) of this paragraph, the value for that
18 school district equals the value calculated pursuant to
19 Subparagraph (f) of this paragraph;

20 (l) if the value calculated for a
21 subject school district pursuant to Subparagraph (j) of this
22 paragraph is five-tenths or greater, then that value is
23 multiplied by five-hundredths;

24 (m) if the value calculated for a
25 subject school district pursuant to Subparagraph (j) of this

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1 paragraph is five-tenths or greater, then the value calculated
2 pursuant to Subparagraph (l) of this paragraph is added to the
3 value calculated pursuant to Subparagraph (f) of this
4 paragraph. Except as provided in Subparagraph (n) or (o) of
5 this paragraph, the sum equals the value for that school
6 district;

7 (n) in those instances in which the
8 calculation pursuant to Subparagraph (k) or (m) of this
9 paragraph yields a value less than one-tenth, one-tenth shall
10 be used as the value for the subject school district;

11 (o) in those instances in which the
12 calculation pursuant to Subparagraph (k) or (m) of this
13 paragraph yields a value greater than one, one shall be used as
14 the value for the subject school district;

15 (p) except as provided in Section
16 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
17 Paragraph (6), (8), [~~or~~] (9) or (11) of this subsection, the
18 amount to be distributed from the fund for an approved project
19 shall equal the total project cost multiplied by a fraction the
20 numerator of which is the value calculated for the subject
21 school district in the current year plus the value calculated
22 for that school district in each of the two preceding years and
23 the denominator of which is three; and

24 (q) as used in this paragraph: 1) "MEM"
25 means the average full-time-equivalent enrollment of students

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1 attending public school in a school district on the eightieth
2 and one hundred twentieth days of the prior school year; 2)
3 "total project cost" means the total amount necessary to
4 complete the public school capital outlay project less any
5 insurance reimbursement received by the school district for the
6 project; and 3) in the case of a state-chartered charter school
7 that has submitted an application for grant assistance pursuant
8 to this section, the "value calculated for the subject school
9 district" means the value calculated for the school district in
10 which the state-chartered charter school is physically located;

11 (6) the amount calculated pursuant to
12 Subparagraph (p) of Paragraph (5) of this subsection shall be
13 reduced by the following procedure:

14 (a) the total of all legislative
15 appropriations made after January 1, 2003 for nonoperating
16 purposes either directly to the subject school district or to
17 another governmental entity for the purpose of passing the
18 money through directly to the subject school district, and not
19 rejected by the subject school district, is calculated;
20 provided that: 1) an appropriation made in a fiscal year shall
21 be deemed to be accepted by a school district unless, prior to
22 June 1 of that fiscal year, the school district notifies the
23 department of finance and administration and the public
24 education department that the district is rejecting the
25 appropriation; 2) the total shall exclude any educational

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1 technology appropriation made prior to January 1, 2005 unless
2 the appropriation was on or after January 1, 2003 and not
3 previously used to offset distributions pursuant to the
4 Technology for Education Act; 3) the total shall exclude any
5 appropriation previously made to the subject school district
6 that is reauthorized for expenditure by another recipient; 4)
7 the total shall exclude one-half of the amount of any
8 appropriation made or reauthorized after January 1, 2007 if the
9 purpose of the appropriation or reauthorization is to fund, in
10 whole or in part, a capital outlay project that, when
11 prioritized by the council pursuant to this section either in
12 the immediately preceding funding cycle or in the current
13 funding cycle, ranked in the top one hundred fifty projects
14 statewide; 5) the total shall exclude the proportionate share
15 of any appropriation made or reauthorized after January 1, 2008
16 for a capital project that will be jointly used by a
17 governmental entity other than the subject school district.
18 Pursuant to criteria adopted by rule of the council and based
19 upon the proposed use of the capital project, the council shall
20 determine the proportionate share to be used by the
21 governmental entity and excluded from the total; and 6) unless
22 the grant award is made to the state-chartered charter school
23 or unless the appropriation was previously used to calculate a
24 reduction pursuant to this paragraph, the total shall exclude
25 appropriations made after January 1, 2007 for nonoperating

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1 purposes of a specific state-chartered charter school,
2 regardless of whether the charter school is a state-chartered
3 charter school at the time of the appropriation or later opts
4 to become a state-chartered charter school;

5 (b) the applicable fraction used for the
6 subject school district and the current calendar year for the
7 calculation in Subparagraph (p) of Paragraph (5) of this
8 subsection is subtracted from one;

9 (c) the value calculated pursuant to
10 Subparagraph (a) of this paragraph for the subject school
11 district is multiplied by the amount calculated pursuant to
12 Subparagraph (b) of this paragraph for that school district;

13 (d) the total amount of reductions for
14 the subject school district previously made pursuant to
15 Subparagraph (e) of this paragraph for other approved public
16 school capital outlay projects is subtracted from the amount
17 calculated pursuant to Subparagraph (c) of this paragraph; and

18 (e) the amount calculated pursuant to
19 Subparagraph (p) of Paragraph (5) of this subsection shall be
20 reduced by the amount calculated pursuant to Subparagraph (d)
21 of this paragraph;

22 (7) as used in this subsection:

23 (a) "governmental entity" includes an
24 Indian nation, tribe or pueblo; and

25 (b) "subject school district" means the

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1 school district that has submitted the application for funding
2 and in which the approved public school capital outlay project
3 will be located;

4 (8) the amount calculated pursuant to
5 Subparagraph (p) of Paragraph (5) of this subsection, after any
6 reduction pursuant to Paragraph (6) of this subsection, may be
7 increased by an additional five percent if the council finds
8 that the subject school district has been exemplary in
9 implementing and maintaining a preventive maintenance program.
10 The council shall adopt such rules as are necessary to
11 implement the provisions of this paragraph;

12 (9) the council may adjust the amount of local
13 share otherwise required if it determines that a school
14 district has used all of its local resources. Before making
15 any adjustment to the local share, the council shall consider
16 whether:

17 (a) the school district has insufficient
18 bonding capacity over the next four years to provide the local
19 match necessary to complete the project and, for all
20 educational purposes, has a residential property tax rate of at
21 least ten dollars (\$10.00) on each one thousand dollars
22 (\$1,000) of taxable value, as measured by the sum of all rates
23 imposed by resolution of the local school board plus rates set
24 to pay interest and principal on outstanding school district
25 general obligation bonds;

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1 (b) the school district: 1) has fewer
2 than an average of eight hundred full-time-equivalent students
3 on the eightieth and one hundred twentieth days of the prior
4 school year; 2) has at least seventy percent of its students
5 eligible for free or reduced-fee lunch; 3) has a share of the
6 total project cost, as calculated pursuant to provisions of
7 this section, that would be greater than fifty percent; and 4)
8 for all educational purposes, has a residential property tax
9 rate of at least seven dollars (\$7.00) on each one thousand
10 dollars (\$1,000) of taxable value, as measured by the sum of
11 all rates imposed by resolution of the local school board plus
12 rates set to pay interest and principal on outstanding school
13 district general obligation bonds; or

14 (c) the school district: 1) has an
15 enrollment growth rate over the previous school year of at
16 least two and one-half percent; 2) pursuant to its five-year
17 facilities plan, will be building a new school within the next
18 two years; and 3) for all educational purposes, has a
19 residential property tax rate of at least ten dollars (\$10.00)
20 on each one thousand dollars (\$1,000) of taxable value, as
21 measured by the sum of all rates imposed by resolution of the
22 local school board plus rates set to pay interest and principal
23 on outstanding school district general obligation bonds; ~~and~~

24 (10) no application for grant assistance from
25 the fund shall be approved unless the council determines that:

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1 (a) the public school capital outlay
2 project is needed and included in the school district's
3 five-year facilities plan among its top priorities;

4 (b) the school district has used its
5 capital resources in a prudent manner;

6 (c) the school district has provided
7 insurance for buildings of the school district in accordance
8 with the provisions of Section 13-5-3 NMSA 1978;

9 (d) the school district has submitted a
10 five-year facilities plan that includes: 1) enrollment
11 projections; 2) a current preventive maintenance plan that has
12 been approved by the council pursuant to Section 22-24-5.3 NMSA
13 1978 and that is followed by each public school in the
14 district; 3) the capital needs of charter schools located in
15 the school district; and 4) projections for the facilities
16 needed in order to maintain a full-day kindergarten program;

17 (e) the school district is willing and
18 able to pay any portion of the total cost of the public school
19 capital outlay project that, according to Paragraph (5), (6),
20 (8) or (9) of this subsection, is not funded with grant
21 assistance from the fund; provided that school district funds
22 used for a project that was initiated after September 1, 2002
23 when the statewide adequacy standards were adopted, but before
24 September 1, 2004 when the standards were first used as the
25 basis for determining the state and school district share of a

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1 project, may be applied to the school district portion required
2 for that project;

3 (f) the application includes the capital
4 needs of any charter school located in the school district or
5 the school district has shown that the facilities of the
6 charter school have a smaller deviation from the statewide
7 adequacy standards than other district facilities included in
8 the application; and

9 (g) the school district has agreed, in
10 writing, to comply with any reporting requirements or
11 conditions imposed by the council pursuant to Section 22-24-5.1
12 NMSA 1978; and

13 (11) the amount distributed from the fund to
14 the subject school district for an approved project shall be
15 increased by an amount equal to twenty-five percent of the
16 total project cost if:

17 (a) the public school facility to be
18 constructed, improved or replaced by the project has previously
19 qualified for a rural community credit pursuant to the
20 provisions of Section 22-24-5.8 NMSA 1978; and

21 (b) the council finds that the planned
22 use of the additional distribution will enhance public school
23 education at the facility, will further the subject school
24 district's educational plan for student success for students
25 attending the facility, is needed by and will benefit the

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1 community in which the facility is located and is a prudent use
2 of state money.

3 C. After consulting with the public school capital
4 outlay oversight task force and other experts, the council
5 shall regularly review and update statewide adequacy standards
6 applicable to all school districts. The standards shall
7 establish the acceptable level for the physical condition and
8 capacity of buildings, the educational suitability of
9 facilities and the need for technological infrastructure.
10 Except as otherwise provided in the Public School Capital
11 Outlay Act, the amount of outstanding deviation from the
12 standards shall be used by the council in evaluating and
13 prioritizing public school capital outlay projects.

14 D. The acquisition of a facility by a school
15 district or charter school pursuant to a financing agreement
16 that provides for lease payments with an option to purchase for
17 a price that is reduced according to lease payments made may be
18 considered a public school capital outlay project and eligible
19 for grant assistance under this section pursuant to the
20 following criteria:

21 (1) no grant shall be awarded unless the
22 council ~~[finds that, prior to the purchase of]~~ determines that,
23 at the time of exercising the option to purchase the facility
24 by the school district or charter school, the facility will
25 equal or exceed the statewide adequacy standards and the

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1 building standards for public school facilities;

2 (2) no grant shall be awarded unless the
3 school district and the need for the facility meet all of the
4 requirements for grant assistance pursuant to the Public School
5 Capital Outlay Act;

6 (3) the total project cost shall equal the
7 total payments that would be due under the agreement if the
8 school district or charter school would eventually acquire
9 title to the facility;

10 (4) the portion of the total project cost to
11 be paid from the fund may be awarded as one grant, but
12 disbursements from the fund shall be made from time to time as
13 lease payments become due;

14 (5) the portion of the total project cost to
15 be paid by the school district or charter school may be paid
16 from time to time as lease payments become due; and

17 (6) neither a grant award nor any provision of
18 the Public School Capital Outlay Act creates a legal obligation
19 for the school district or charter school to continue the lease
20 from year to year or to purchase the facility.

21 E. In order to encourage private capital investment
22 in the construction of public school facilities, the purchase
23 of a privately owned school facility that is, at the time of
24 application, in use by a school district may be considered a
25 public school capital outlay project and eligible for grant

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1 assistance pursuant to this section if the council finds that:

2 (1) at the time of the initial use by the
3 school district, the facility to be purchased equaled or
4 exceeded the statewide adequacy standards and the building
5 standards for public school facilities;

6 (2) at the time of application, attendance at
7 the facility to be purchased is at seventy-five percent or
8 greater of design capacity and the attendance at other schools
9 in the school district that the students at the facility would
10 otherwise attend is at eighty-five percent or greater of design
11 capacity; and

12 (3) the school district and the capital outlay
13 project meet all of the requirements for grant assistance
14 pursuant to the Public School Capital Outlay Act; provided
15 that, when determining the deviation from the statewide
16 adequacy standards for the purposes of evaluating and
17 prioritizing the project, the students using the facility shall
18 be deemed to be attending other schools in the school district.

19 F. It is the intent of the legislature that grant
20 assistance made pursuant to this section allows every school
21 district to meet the standards developed pursuant to Subsection
22 C of this section; provided, however, that nothing in the
23 Public School Capital Outlay Act or the development of
24 standards pursuant to that act prohibits a school district from
25 using ~~[local]~~ other funds available to the district to exceed

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1 the statewide adequacy standards.

2 G. Upon request, the council shall work with, and
3 provide assistance and information to, the public school
4 capital outlay oversight task force.

5 H. The council may establish committees or task
6 forces, not necessarily consisting of council members, and may
7 use the committees or task forces, as well as existing agencies
8 or organizations, to conduct studies, conduct surveys, submit
9 recommendations or otherwise contribute expertise from the
10 public schools, programs, interest groups and segments of
11 society most concerned with a particular aspect of the
12 council's work.

13 I. Upon the recommendation of the public school
14 facilities authority, the council shall develop building
15 standards for public school facilities and shall promulgate
16 other such rules as are necessary to carry out the provisions
17 of the Public School Capital Outlay Act.

18 J. No later than December 15 of each year, the
19 council shall prepare a report summarizing its activities
20 during the previous fiscal year. The report shall describe in
21 detail all projects funded, the progress of projects previously
22 funded but not completed, the criteria used to prioritize and
23 fund projects and all other council actions. The report shall
24 be submitted to the public education commission, the governor,
25 the legislative finance committee, the legislative education

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1 study committee and the legislature."

2 Section 8. A new section of the Public School Capital
3 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

4 "22-24-5.8. [NEW MATERIAL] RURAL COMMUNITY CREDIT FOR
5 CERTAIN FACILITIES.--

6 A. Upon application by a school district pursuant
7 to rules adopted by the council, the council may decide if a
8 public school facility, located within that school district,
9 qualifies for a rural community credit.

10 B. The council shall qualify a public school
11 facility for the rural community credit if the council
12 determines that:

13 (1) the facility is located in an
14 unincorporated, rural area;

15 (2) the public school facility is the only
16 facility practicably available for community purposes and is
17 sharing its use with the community, primarily at the school
18 district's expense with little contribution from the community;

19 (3) the community served by the facility does
20 not have adequate infrastructure or resources to acquire its
21 own facilities or to compensate the school district for use of
22 the public school facility;

23 (4) in calculating the grant assistance from
24 the fund for a project pursuant to Section 22-24-5 NMSA 1978,
25 the value calculated for the school district in which the

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1 facility is located pursuant to Subparagraph (k), (m), (n) or
2 (o) of Paragraph (5) of Subsection B of that section is equal
3 to or greater than seven-tenths;

4 (5) averaged over the previous four property
5 tax years, the school district in which the facility is located
6 had a residential property tax rate of at least nine dollars
7 (\$9.00) on each one thousand dollars (\$1,000) of taxable value,
8 as measured by the sum of all rates imposed by resolution of
9 the local school board plus rates set to pay interest and
10 principal on outstanding school district general obligation
11 bonds;

12 (6) at least seventy percent of the students
13 in the school district in which the facility is located are
14 eligible for free or reduced-fee lunch; and

15 (7) the school district has complied with all
16 rules adopted by the council for the implementation of the
17 provisions of this section.

18 C. Upon the award of a capital outlay grant
19 pursuant to Section 22-24-5 NMSA 1978 for a public school
20 facility that has qualified for a rural community credit
21 pursuant to the provisions of this section, pursuant to
22 Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978,
23 the school district shall be eligible for an additional
24 distribution to benefit that facility."

25 Section 9. Section 22-24-9 NMSA 1978 (being Laws 2003,

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1 Chapter 147, Section 1, as amended) is amended to read:

2 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
3 CREATION--POWERS AND DUTIES.--

4 A. The "public school facilities authority" is
5 created under the council. The authority shall be headed by a
6 director, selected by the council, who shall be versed in
7 construction, architecture or project management. The director
8 may hire no more than two deputies with the approval of the
9 council, and, subject to budgetary constraints set out in
10 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
11 contract with such technical and administrative personnel as
12 are necessary to carry out the provisions of this section. The
13 director, deputies and all other employees of the authority
14 shall be exempt from the provisions of the Personnel Act.

15 B. The authority shall:

16 (1) serve as staff to the council;
17 (2) as directed by the council, provide those
18 assistance and oversight functions required of the council by
19 Section 22-24-5.1 NMSA 1978;

20 (3) assist school districts with:
21 (a) the development and implementation
22 of five-year facilities plans and preventive maintenance plans;
23 (b) procurement of architectural and
24 engineering services;
25 (c) management and oversight of

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1 construction activities; and

2 (d) training programs;

3 (4) assist the construction industries
4 division of the regulation and licensing department in
5 developing a certification program for non-licensed school
6 district employees and regional education cooperative personnel
7 who perform basic and general facility maintenance and parts
8 exchange on existing electrical; mechanical; plumbing; and
9 heating, ventilation and air conditioning equipment;

10 (5) with the assistance of the construction
11 industries division, conduct a training program for school
12 district employees and regional education cooperative personnel
13 who desire to be certified to perform basic and general
14 facility maintenance and parts exchange on existing electrical;
15 mechanical; plumbing; and heating, ventilation and air
16 conditioning equipment;

17 [~~(4)~~] (6) conduct ongoing reviews of five-year
18 facilities plans, preventive maintenance plans and performance
19 pursuant to those plans;

20 [~~(5)~~] (7) as directed by the council, assist
21 school districts in analyzing and assessing their space
22 utilization options;

23 [~~(6)~~] (8) ensure that public school capital
24 outlay projects are in compliance with applicable building
25 codes;

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1 [~~(7)~~] (9) conduct on-site inspections as
2 necessary to ensure that the construction specifications are
3 being met and periodically inspect all of the documents related
4 to projects;

5 [~~(8)~~] (10) require the use of standardized
6 construction documents and the use of a standardized process
7 for change orders;

8 [~~(9)~~] (11) have access to the premises of a
9 project and any documentation relating to the project;

10 [~~(10)~~] (12) after consulting with the
11 department, recommend building standards for public school
12 facilities to the council and ensure compliance with building
13 standards adopted by the council;

14 [~~(11)~~] (13) notwithstanding the provisions of
15 Subsection D of Section 22-24-6 NMSA 1978, account for all
16 distributions of grant assistance from the fund for which the
17 initial award was made after July 1, 2004, and make annual
18 reports to the department, the governor, the legislative
19 education study committee, the legislative finance committee
20 and the legislature;

21 [~~(12)~~] (14) maintain a database of the
22 condition of school facilities and maintenance schedules; and

23 [~~(13)~~] (15) ensure that outstanding
24 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA
25 1978. In the performance of this duty, the authority:

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1 (a) shall work with school districts to
2 validate the assessment of the outstanding deficiencies and the
3 projected costs to correct the deficiencies;

4 (b) shall work with school districts to
5 provide direct oversight of the management and construction of
6 the projects that will correct the outstanding deficiencies;

7 (c) shall oversee all aspects of the
8 contracts entered into by the council to correct the
9 outstanding deficiencies;

10 (d) may conduct on-site inspections
11 while the deficiencies correction work is being done to ensure
12 that the construction specifications are being met and may
13 periodically inspect all of the documents relating to the
14 projects;

15 (e) may require the use of standardized
16 construction documents and the use of a standardized process
17 for change orders;

18 (f) may access the premises of a project
19 and any documentation relating to the project; and

20 (g) shall maintain, track and account
21 for deficiency correction projects separately from other
22 capital outlay projects funded pursuant to the Public School
23 Capital Outlay Act.

24 C. All actions taken by the authority shall be
25 consistent with educational programs conducted pursuant to the

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1 Public School Code. In the event of any potential or perceived
2 conflict between a proposed action of the authority and an
3 educational program, the authority shall consult with the
4 secretary.

5 D. A school district, aggrieved by a decision or
6 recommendation of the authority, may appeal the matter to the
7 council by filing a notice of appeal with the council within
8 thirty days of the authority's decision or recommendation.

9 Upon filing of the notice:

10 (1) the decision or recommendation of the
11 authority shall be suspended until the matter is decided by the
12 council;

13 (2) the council shall hear the matter at its
14 next regularly scheduled hearing or at a special hearing called
15 by the chair for that purpose;

16 (3) at the hearing, the school district, the
17 authority and other interested parties may make informal
18 presentations to the council; and

19 (4) the council shall finally decide the
20 matter within ten days after the hearing."

21 Section 10. Section 22-25-2 NMSA 1978 (being Laws 1975
22 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

23 "22-25-2. DEFINITIONS.--As used in the Public School
24 Capital Improvements Act:

25 A. "program unit" means the product of the program

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1 element multiplied by the applicable cost differential factor,
2 as defined in Section 22-8-2 NMSA 1978; and

3 B. "capital improvements" means expenditures,
4 including payments made with respect to lease-purchase
5 arrangements as defined in the Education Technology Equipment
6 Act or the Public School Lease Purchase Act but excluding any
7 other debt service expenses, for:

8 (1) erecting, remodeling, making additions to,
9 providing equipment for or furnishing public school buildings
10 and for fiscal years 2010 and 2011, purchasing risk liability
11 insurance;

12 [~~(2)~~] ~~payments made pursuant to a financing~~
13 ~~agreement entered into by a school district or a charter school~~
14 ~~for the leasing of a building or other real property with an~~
15 ~~option to purchase for a price that is reduced according to~~
16 ~~payments made;~~

17 ~~(3)]~~ (2) purchasing or improving public school
18 grounds;

19 [~~(4)]~~ (3) maintenance of public school
20 buildings or public school grounds, including the purchasing or
21 repairing of maintenance equipment, participating in the
22 facility information management system as required by the
23 Public School Capital Outlay Act and including payments under
24 contracts with regional education cooperatives for maintenance
25 support services and expenditures for technical training and

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1 certification for maintenance and facilities management
2 personnel, but excluding salary expenses of school district
3 employees;

4 [~~(5)~~] (4) purchasing activity vehicles for
5 transporting students to extracurricular school activities; or

6 [~~(6)~~] (5) purchasing computer software and
7 hardware for student use in public school classrooms."

8 Section 11. Section 22-25-3 NMSA 1978 (being Laws 1975
9 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

10 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
11 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

12 A. A local school board may adopt a resolution to
13 submit to the qualified electors of the school district the
14 question of whether a property tax should be imposed upon the
15 net taxable value of property allocated to the school district
16 under the Property Tax Code at a rate not to exceed that
17 specified in the resolution for the purpose of capital
18 improvements in the school district. The resolution shall:

19 [~~A.~~] (1) identify the capital improvements for
20 which the revenue proposed to be produced will be used;

21 [~~B.~~] (2) specify the rate of the proposed tax,
22 which shall not exceed two dollars (\$2.00) on each one thousand
23 dollars (\$1,000) of net taxable value of property allocated to
24 the school district under the Property Tax Code;

25 [~~C.~~] (3) specify the date an election will be

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1 held to submit the question of imposition of the tax to the
2 qualified electors of the district; and

3 ~~[D-]~~ (4) limit the imposition of the proposed
4 tax to no more than six property tax years.

5 B. On or after July 1, 2009, a resolution submitted
6 to the qualified electors pursuant to Subsection A of this
7 section shall include capital improvements funding for a
8 locally chartered or state-chartered charter school located
9 within the school district if the charter school timely
10 provides the necessary information to the school district for
11 inclusion in the resolution that identifies the capital
12 improvements of the charter school for which the revenue
13 proposed to be produced will be used."

14 Section 12. Section 22-25-7 NMSA 1978 (being Laws 1975
15 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

16 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
17 EXPENDITURES.--

18 A. If as a result of an election held in accordance
19 with the Public School Capital Improvements Act a majority of
20 the qualified electors voting on the question [~~vote~~] votes in
21 favor of the imposition of the tax, the tax rate shall be
22 certified, unless the local school board requests by resolution
23 that a rate be discontinued, by the department of finance and
24 administration at the rate specified in the resolution
25 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
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1 required by operation of the rate limitation provisions of
2 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
3 resolution and be imposed at the rate certified in accordance
4 with the provisions of the Property Tax Code.

5 B. The revenue produced by the tax and, except as
6 provided in Subsection F, G or H of Section 22-25-9 NMSA 1978,
7 any state distribution resulting to the district under the
8 Public School Capital Improvements Act shall be expended only
9 for the capital improvements specified in the authorizing
10 resolution.

11 C. For resolutions approved by the electors on or
12 after July 1, 2009, the amount of tax revenue to be distributed
13 to each charter school that was included in the resolution
14 shall be determined each year and shall be in the same
15 proportion as the average full-time-equivalent enrollment of
16 the charter school on the fortieth day of the prior school year
17 is to the total such enrollment in the school district;
18 provided that no distribution shall be made to an approved
19 charter school that had not commenced classroom instruction in
20 the prior school year and, provided further, that, in
21 determining a school district's total enrollment, students
22 attending a state-chartered charter school within that school
23 district shall be included. Each year, the department shall
24 certify to the county treasurer of the county in which the
25 eligible charter schools in the school district are located the

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1 percentage of the revenue to be distributed to each charter
2 school. The county treasurer shall distribute the charter
3 school's share of the property tax revenue directly to the
4 charter school.

5 D. Notwithstanding Subsection B of this section,
6 the distribution from local property tax receipts in fiscal
7 years 2009 and 2010 may be expended for school district or
8 charter school operating costs related to facility maintenance,
9 including salary expenses of school district maintenance
10 personnel."

11 Section 13. Section 22-25-9 NMSA 1978 (being Laws 1975
12 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

13 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
14 TAX UNDER CERTAIN CIRCUMSTANCES.--

15 A. Except as provided in Subsection C or G of this
16 section, the secretary shall distribute to any school district
17 that has imposed a tax under the Public School Capital
18 Improvements Act an amount from the public school capital
19 improvements fund that is equal to the amount by which the
20 revenue estimated to be received from the imposed tax, at the
21 rate certified by the department of finance and administration
22 in accordance with Section 22-25-7 NMSA 1978, assuming a one
23 hundred percent collection rate, is less than an amount
24 calculated by multiplying the school district's first forty
25 days' total program units by the amount specified in Subsection
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1 B of this section and further multiplying the product obtained
2 by the tax rate approved by the qualified electors in the most
3 recent election on the question of imposing a tax under the
4 Public School Capital Improvements Act. The distribution shall
5 be made each year that the tax is imposed in accordance with
6 Section 22-25-7 NMSA 1978; provided that no state distribution
7 from the public school capital improvements fund may be used
8 for capital improvements to any administration building of a
9 school district. In the event that sufficient funds are not
10 available in the public school capital improvements fund to
11 make the state distribution provided for in this section, the
12 dollar per program unit figure shall be reduced as necessary.

13 B. In calculating the state distribution pursuant
14 to Subsection A of this section, the following amounts shall be
15 used:

16 (1) the amount calculated pursuant to
17 Subsection D of this ~~[subsection]~~ section per program unit; and

18 (2) an additional amount certified to the
19 secretary by the public school capital outlay council. No
20 later than June 1 of each year, the council shall determine the
21 amount needed in the next fiscal year for public school capital
22 outlay projects pursuant to the Public School Capital Outlay
23 Act and the amount of revenue, from all sources, available for
24 the projects. If, in the sole discretion of the council, the
25 amount available exceeds the amount needed, the council may

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1 certify an additional amount pursuant to this paragraph;
2 provided that the sum of the amount calculated pursuant to this
3 paragraph plus the amount in Paragraph (1) of this subsection
4 shall not result in a total statewide distribution that, in the
5 opinion of the council, exceeds one-half of the total revenue
6 estimated to be received from taxes imposed pursuant to the
7 Public School Capital Improvements Act.

8 C. For any fiscal year notwithstanding the amount
9 calculated to be distributed pursuant to Subsections A and B of
10 this section, except as provided in Subsection G of this
11 section, a school district, the voters of which have approved a
12 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a
13 distribution less than the amount calculated pursuant to
14 Subsection E of this section multiplied by the school
15 district's first forty days' total program units and further
16 multiplying the product obtained by the approved tax rate.

17 D. For purposes of calculating the distribution
18 pursuant to Subsection B of this section, the amount used in
19 Paragraph (1) of that subsection shall equal seventy dollars
20 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year
21 shall equal the amount for the previous fiscal year adjusted by
22 the percentage increase between the next preceding calendar
23 year and the preceding calendar year of the consumer price
24 index for the United States, all items, as published by the
25 United States department of labor.

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1 E. For purposes of calculating the minimum
2 distribution pursuant to Subsection C of this section, the
3 amount used in that subsection shall equal five dollars (\$5.00)
4 through fiscal year 2005 and in each subsequent fiscal year
5 shall equal the amount for the previous fiscal year adjusted by
6 the percentage increase between the next preceding calendar
7 year and the preceding calendar year of the consumer price
8 index for the United States, all items, as published by the
9 United States department of labor.

10 F. In expending distributions made pursuant to this
11 section, school districts and charter schools shall give
12 priority to maintenance projects, including payments under
13 contracts with regional education cooperatives for maintenance
14 support services. In addition, distributions made pursuant to
15 this section may be expended by school districts [~~for the~~
16 ~~school district portion of~~] and charter schools as follows:

17 (1) for the school district portion of the
18 total project cost for roof repair or replacement required by
19 Section 22-24-4.3 NMSA 1978; [~~or~~]

20 (2) for the school district portion of
21 payments made under a financing agreement entered into by a
22 school district or a charter school for the leasing of a
23 building or other real property with an option to purchase for
24 a price that is reduced according to the payments made, if the
25 school district has received a grant for the state share of the

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1 payments pursuant to Subsection D of Section 22-24-5 NMSA 1978;
2 (3) for the school district portion of the
3 project cost for a highly cost-effective project for which the
4 school district has received an award pursuant to Section
5 22-24-4.5 NMSA 1978; or

6 (4) notwithstanding any other provision of the
7 Public School Capital Improvements Act, the distribution made
8 in fiscal year 2010 may be expended for school district
9 operating costs related to facility maintenance, including
10 salary expenses of school district maintenance personnel.

11 G. If a serious deficiency in a roof of a public
12 school facility has been corrected pursuant to Section
13 22-24-4.4 NMSA 1978 and the school district has refused to pay
14 its share of the cost as determined by that section, until the
15 public school capital outlay fund is reimbursed in full for the
16 share attributed to the district, the distribution calculated
17 pursuant to this section shall not be made to the school
18 district but shall be made to the public school capital outlay
19 fund.

20 H. A portion of each distribution made by the state
21 pursuant to this section on or after July 1, 2009 shall be
22 further distributed by the school district to each locally
23 chartered or state-chartered charter school located within the
24 school district. The amount to be distributed to each charter
25 school shall be in the same proportion as the average

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1 full-time-equivalent enrollment of the charter school on the
2 fortieth day of the prior school year is to the total such
3 enrollment in the school district; provided that no
4 distribution shall be made to an approved charter school that
5 had not commenced classroom instruction in the prior school
6 year. Each year, the department shall certify to the school
7 district the amount to be distributed to each charter school.
8 Distributions received by a charter school pursuant to this
9 subsection shall be expended pursuant to the provisions of the
10 Public School Capital Improvements Act; except that if capital
11 improvements for the charter school were not identified in a
12 resolution approved by the electors, the charter school may
13 expend the distribution for any capital improvements, including
14 those specified in Subsection F of this section.

15 I. In determining a school district's total program
16 units pursuant to Subsections A and C of this section and a
17 school district's total enrollment pursuant to Subsection H of
18 this section, students attending a state-chartered charter
19 school within the school district shall be included.

20 [~~H.~~] J. In making distributions pursuant to this
21 section, the secretary shall include such reporting
22 requirements and conditions as are required by rule of the
23 public school capital outlay council. The council shall adopt
24 such requirements and conditions as are necessary to ensure
25 that the distributions are expended in the most prudent manner

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1 possible and are consistent with the original purpose as
2 specified in the authorizing resolution. Copies of reports or
3 other information received by the secretary in response to the
4 requirements and conditions shall be forwarded to the council."

5 Section 14. A new section of the Construction Industries
6 Licensing Act is enacted to read:

7 "[NEW MATERIAL] ADDITIONAL DIVISION DUTIES--LICENSING
8 PROGRAM FOR SCHOOL DISTRICT AND REGIONAL EDUCATION COOPERATIVE
9 PERSONNEL.--

10 A. The division shall, with the assistance of the
11 public school facilities authority and after review by the
12 commission, develop and carry out a certification program for
13 school district and regional education cooperative personnel
14 who perform basic and general facility maintenance and parts
15 exchange on existing electrical; mechanical; plumbing; and
16 heating, ventilation and air conditioning equipment.

17 B. The division shall assist the public school
18 facilities authority in developing a training program for
19 individuals who desire to be certified pursuant to Subsection A
20 of this section."

21 Section 15. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.